



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/154116

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly issued a notice of state tax intercept to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Yia Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 13, 2013, the agency issued Notifications of FS Overissuance to the Petitioner and BS, an adult member of the household, notifying them that the agency intends to recover an overissuance of FS benefits in the amount of \$9,877 for the period of March 16, 2011 – March 31, 2013.

3. On August 2, 2013, the agency issued a Repayment Agreement for FS Overpayment to the Petitioner. The Agreement states that the Petitioner must pay in full by August 25, 2013 or return the repayment agreement by August 25, 2013. It also states that if the Petitioner is currently receiving benefits, the agency will automatically collect the overissuance by reducing benefits each month and there is no need to return the agreement.
4. Petitioner contacted the Public Assistance Collection Unit in to arrange repayment. She was informed that the agency would recoup from her FS benefits. In September, the Petitioner returned to work. On September 11, 2013, the agency issued a notice of decision informing her that FS benefits would end effective October 1, 2013 due to income exceeding the program limit. On September 12, 2013, Petitioner contacted the agency about her repayment and was informed that she will get a letter requesting repayment.
5. On September 4, October 2 and November 4, 2013, the agency issued dunning notices to the Petitioner.
6. On October 8, 2013, the agency issued a Repayment Agreement to the Petitioner.
7. Petitioner contacted the agency to make repayment arrangements. It was agreed that she would pay \$50/month beginning in October, 2013. BS also arranged a repayment agreement of \$50/month.
8. On November 4, 2013, the agency issued a notice to the Petitioner that it received her \$50 payment on October 21, 2013 toward her overpayment claim. It notified her that the remaining balance on her debt is \$9,777. Petitioner made additional payments of \$100 on November 19, 2013 and December 23, 2013. BS made payments of \$101 on October 21, 2013, November 19, 2013 and December 23, 2013.
9. On December 13, 2013, the agency issued a notice of state tax intercept to the Petitioner informing her that her unpaid debt for excess public assistance in the amount of \$9,677 may be intercepted from tax refunds.
10. On December 13, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.85, provides that the Wisconsin Department of Health Services shall, at least annually, certify to the Wisconsin Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, Food Stamps, AFDC and/or Medical Assistance payments previously made incorrectly.

The Department of Children and Families – Public Assistance Collections Unit must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices. FoodShare Handbook § 7.3.2.10.

A person who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a person has received three dunning notices, s/he is subject to both tax intercept and monthly repayment. FoodShare Handbook § 7.3.2.12.

In this case, the Petitioner did not appeal the underlying FS overissuance. At the time that she received the first repayment agreement in August, she was still receiving FS benefits. She was told that there would be a recoupment from her benefits so she was not required to return the repayment agreement. In September, before the recoupment began, the Petitioner was found to be ineligible for FS benefits due to an increase in household income. Thus, there was no recoupment of benefits in August or September. As a result, dunning notices were issued in September and October. The Petitioner was advised to wait for another repayment agreement to be sent to arrange for repaying the debt. On October 8, 2013, the Petitioner received the repayment agreement and arranged for a repayment schedule. She started repayment of the debt in October. Because the Petitioner did not return the signed Repayment Agreement, the system generated a third dunning notice on November 4, 2013 and the notice of tax intercept on December 13, 2013.

Because the Petitioner did not receive three dunning notices prior to entering into a monthly repayment agreement and because she had made two payments in October and November per the agreement, the agency did not properly issue a tax intercept notice to the Petitioner.

CONCLUSIONS OF LAW

The agency did not properly issue a tax intercept notice to the Petitioner.

THEREFORE, it is

ORDERED

That the agency shall take all administrative steps necessary to rescind the tax intercept notice issued to the Petitioner on December 13, 2013 and shall cease any action to intercept Petitioner's taxes related to the December 13, 2013 notice. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

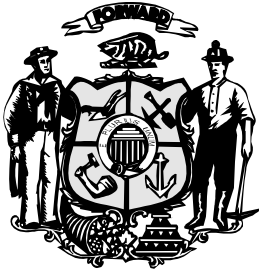
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 6, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit